

THE HIGH COURT OF SINDH AT KARACHI

Criminal Appeal No.161 of 2015
Confirmation Case No.02 of 2015

Present:

Mr. Justice Naimatullah Phulpoto
Mr. Justice Aftab Ahmed Gorar

J U D G M E N T

Date of hearing: 15th March 2016

Date of Announcement: 30th March 2016

Appellant: Sona Khan alias Sonhra S/o Muhammad Bux, through Mr. Muhammad Ramzan, advocate

Respondent: The State through Mr. Muhammad Iqbal Awan Asstt: Prosecutor General Sindh

Complainant: Muhammad Parvez through Mr. Fazul Rehman, advocate

NAIMATULLAH PHULPOTO, J.--- Appellant Sona Khan alias Sonhra was tried by learned III Additional Sessions Judge, Malir Karachi in Sessions Case No.792/2009, arising out of Crime No.286/2009, registered at P.S. Sukhan, Malir Karachi, under section 302, PPC. After full-dressed trial, by judgment dated 13.06.2015, appellant Sona Khan alias Sonhra was convicted under Section 302(b), PPC and sentenced to death. He was ordered to pay compensation of Rs.100,000/- to be paid to the legal heirs of deceased Ghulam Fareed. In case of default in payment of compensation, he was ordered to suffer R.I. for six months more. Trial Court made reference to this Court for confirmation of death sentence awarded to accused as required under Section 374 Cr.P.C. Appellant, being aggrieved and dissatisfied, filed instant Criminal Appeal. By this single judgment, we intend to dispose of Criminal Appeal as well as death reference.

2. Brief facts of the prosecution case as disclosed in the F.I.R. are that complainant Muhammad Parvez was working along with his paternal uncle Ghulam Fareed (now deceased) at the cattle pan of Ajab Khan' Kichi. It is alleged that 5/6 days prior to the incident there was exchange of hot words

in between paternal uncle of complainant, namely Rab Nawaz and accused Sona Khan alias Sonhra but dispute was settled due to intervention of the persons of the locality. It is further alleged that due to exchange of such hot words much annoyance was caused to the appellant. It is stated, that in fear Rab Nawaz went to his native place. On 12.10.2009, complainant along with his paternal uncle Ghulam Fareed was present at cattle pan where it is alleged that at about 09:30 a.m. accused Sona Khan alias Sonhra appeared in cattle pan and started causing knife blows upon Ghulam Fareed, he sustained two knife injuries on chest and abdomen. It is further alleged in the F.I.R. that Ghulam Fareed succumbed to injuries at spot and accused Sona Khan alias Sonhra was caught hold at spot along with knife. Police was called and custody of accused Sona Khan alias Sonhra was handed over to the police. Complainant Muhammad Parvez lodged report against accused, it was recorded vide Crime No.286/2009 at P.S. Sukhan for offence under section 302, PPC. ASI Shabbir Hussain sent the dead body to the hospital for postmortem examination and report. Complainant handed over him the custody of accused Sona Khan alias Sonhra in presence of Mashirs at spot so also *churry*, which accused was carrying on at the time of incident. Investigation officer sealed *churry* at the spot. Investigation officer after postmortem examination sent blood stained clothes of the deceased so also *churry* to the Chemical Examiner for report. Another investigation officer Abdul Khaliq inspected the place of wardat on the pointation of complainant and prepared such mashirnama and recorded 161, Cr.PC statements of PWs. On the completion of usual investigation challan was submitted against accused under section 302, PPC.

3. Case was sent up to the Court of Sessions, it was made over to learned III Additional Sessions Judge, Malir for trial in accordance with law. Learned III Additional Sessions Judge, Malir framed charge against accused Sona Khan alias Sonhra under sections 302, PPC. Accused pleaded not guilty and claimed to be tried.

4. In order to prove its case, prosecution examined the following witnesses before the trial Court:-

1. PW-1/Complainant Muhammad Parvez at Ex-3
2. PW-2 Muhammad Sajjid at Ex-4

3. PW-3 Muhammad Tariq at Ex-5
4. PW-4 Shabbir Hussain at Ex-7
5. PW-5 Dr. Abdul Razzak at Ex-8

5. Process was issued by trial Court against PWs Ahmed Khan and Muhammad Rustam, it was returned unserved with the endorsement that they were not traceable. Statement of process server ASI Sher Alam was recorded at Ex-6.

6. Learned DDPP vide his statement dated 07.02.2015 closed prosecution side at Ex-10.

7. Statement of accused was recorded under section 342, Cr.PC at Ex-11. Trial Court vide order dated 08.05.2015, noticed that all the incriminating pieces of evidence, such as, chemical reports and questions regarding recoveries were not put to accused while recording his statement under section 342, Cr.PC. Thereafter, statement of accused was recorded under section 342, Cr.PC afresh while putting all the incriminating pieces of evidence for his explanation at Ex-12. Accused Sona Khan alias Sonhra denied the prosecution allegations and stated that he had not committed murder of deceased. He had denied that churry was recovered from his possession in presence of mashirs Muhammad Tariq and Muhammad Parvez but raised plea that he was arrested on 12.10.2009 at 11:00 p.m. from his house. Other pieces of evidence and positive report of the chemical examiner have been denied by the accused and stated that PWs have deposed against him because they belong to the same place where complainant originally resides. Accused declined to give statement on oath in disproof of prosecution allegation. Accused did not lead evidence in defence. In a question "what else he has to say?", he pleaded his innocence and stated that prosecution case is false and he has not committed alleged offence and raised plea that he has been falsely implicated on account of previous differences with the complainant at his native place.

8. Learned III Additional Sessions Judge, Malir Karachi after hearing the learned counsel for the parties and assessment of the evidence, convicted the appellant and sentenced to death as stated above.

9. Mr. Muhammad Ramzan, learned advocate for appellant argued that incident occurred on 12.10.2009 at 09:30 pm at cattle colony, the matter was reported to police station Sukhan on the same day at 11:00 p.m., such entry was made but the same was not produced during trial. It is contended that prosecution witnesses are related to the deceased and the conduct of these PWs was unnatural, they could not come-forward to rescue the deceased. It is also contended that as per prosecution case, after commission of offence accused was in the custody of the relatives of the deceased but they did not cause any harm to him. It is contended that PWs were chance witnesses and their presence at the place of incident was doubtful. Learned counsel for the appellant argued that motive as set up in the F.I.R. has not been proved at trial. It is argued that there is contradiction regarding exact location of the place of occurrence. It is also contended that medical evidence was contradictory to the ocular evidence. Clothes of accused were also not stained with blood. It is argued that finger prints of accused on churri were also not obtained during investigation. In support of his contentions, he relied upon the following cases:

1. Mir Alam vs. Amroz Khan and another (PLD 2015 Pesh. 125)
2. Akhtar Hussain alias Kaka vs. The State (2009 PCr.LJ 444)
3. Abid Hussain vs. The State (2008 PCr.LJ 230)
4. Abdul Wahid vs. Umar and 2 others (2013 PCr.LJ 192)
5. Muhammad Irfan vs. The State (PLD 2008 (Karachi) 182)
6. Muhammad Rafique vs. The State (PLD 2008 Lahore 268)

10. Mr. Mohammad Iqbal Awan, learned Assistant Prosecutor General Sindh, assisted by counsel for complainant, argued that prosecution had produced Parvaiz, Muhammad Sajid and Muhammad Tariq as eye witnesses of the incident. It is argued that accused was caught red handed at spot. PW Muhammad Sajid has stated that he had taken churri from the hands of accused and handed over custody of accused to SIP Shabbir Hussain, who reached at the spot. He further argued that as per sketch prepared by the Investigation Officer, dagger was double edged and its blade was about 8 inches. As regards to motive it is argued that there was previous enmity between the parties. Churri was sent to the chemical examiner on 07.11.2009 and positive report was received. Clothes of the deceased were also bloodstained. It is argued that ocular evidence is corroborated by medical evidence. In support of contentions, reliance has been placed upon the following cases:

1. Mst. NAZAKAT versus HAZRAT JAMAL and another (PLD 2007 Supreme Court 453)
2. AMAL SHERIN and another versus THE STATE through AG, NWFP (PLD 2004 Supreme Court 371)
3. IFTIKHAR AHMED versus THE STATE (2005 SCMR 272)
4. MUHAMMAD ASGHAR , Etc versus THE STATE (1996 CrLJ 622)
5. SALIM JAVED DURRANI v. THE STATE through Deputy Attorney-General, N.W.F.P and 3 others (2005 PCr.LJ 22)

11. We have carefully heard Mr. Muhammad Ramzan, learned counsel for the appellant and Mr. Mohammad Iqbal Awan, learned Assistant Prosecutor General Sindh, assisted by learned counsel for the complainant and perused the entire evidence.

12. The facts of this case as well as evidence produced before the trial Court find an elaborate mention in the judgment of the trial Court dated 13.06.2015 therefore the same may not be reproduced here so as to avoid duplication and unnecessary repetition.

13. As regards to unnatural death of deceased, prosecution examined Dr. Abdul Razzak Shaikh, he stated that on 13.10.2019, he was posted as MLO, JPMC, when dead body of deceased Ghulam Fareed was brought by ASI Fida Hussain of P.S. Sukhan for postmortem examination and report. He started postmortem examination of deceased at 01:30 a.m. and finished at 02:50 a.m. Upon external examination of the dead body, MLO found the following injuries:

External examination of dead body:

1. Stab wound 2x0.5 c.m mid of chest.
2. Stab wound 3x0.5 c.m. left hypochondrium. Both injuries were antemortem.

Internal examination of dead body:

Throat

800 cc blood present in left cavity, left atrium of heart punctured.

Abdomen

Blood seen 400cc in cavity, spleen teared. Stomach empty, liver and kidneys normal.

Rigor Mortis developing.

14. According to the opinion of Medical Officer, death of the deceased had occurred due to shock and hemorrhage, caused by sharp edged weapon. Time between injuries and death was instantaneously and time

between death and postmortem was 2 to 4 hours. Medical officer issued such post mortem report and produced at Ex-8/A.

15. From the evidence of the Medical officer, it is proved that deceased died his unnatural death as described by medical officer. Learned defence counsel has also not disputed unnatural death of deceased.

16. Keeping in view the peculiar facts and circumstances of the case, at the cost of repetition, material evidence is discussed by us for deeper appreciation.

17. Complainant Pervaiz has deposed that on 12.10.2009 at 9:30 pm, he along with P.Ws Tariq, Sajid and Ghulam Fareed (deceased) was present at Ajab Khan Cattle pond, suddenly, accused Sonharo Khan armed with churry appeared there and started causing churry blows upon Ghulam Fareed at his chest and abdomen. Ghulam Fareed died at the spot. Appellant Sonharo was caught hold at spot along with Churry/crime weapon. Other persons also gathered at the place of incident. Someone informed the police; police arrived there at 10:15 pm and custody of the accused was handed over to the police with churry. Mashirnama of arrest and recovery was prepared. Police recorded statement of complainant. Place of occurrence was inspected. Mashirnama was prepared. As regards to the motive for commission of the offence, complainant has stated that 5/6 days prior to the incident, there was exchange of hot words in between accused Sonharo and his paternal uncle cousin Rab Nawaz. Due to fear said Rab Nawaz had gone to his native village and accused committed murder of his maternal uncle Ghulam Fareed. In the cross examination he has denied the suggestion for deposing falsely against accused.

18. PW-2 Muhammad Sajjad was eye witness of the incident. He has stated that on 12.10.2009 he was present at cattle pan of Ajab' Khan, PW Muhammad Tariq, Parvez and Ghulam Fareed were also present there. It was 09:30 p.m. Suddenly, accused Sona Khan alias Sonhra appeared in cattle pan and started causing churry blows to Ghulam Fareed. He was caught hold by the PWs and churry was removed from his hand. Ghulam Fareed expired at spot. Police came there and his statement was recorded

in the case. In the cross-examination he has denied the suggestion that murder of Ghulam Fareed was committed by some unknown person.

19. PW-3 Muhammad Tariq was also eye witness of the incident. He has categorically stated that on 12.10.2009 at 09:30 p.m. he along with PWs Muhammad Tariq, Parvez and Ghulam Fareed was present at the cattle pan of Ajab Khan, suddenly, accused Sona Khan alias Sonhra appeared and started causing churry blows to Ghulam Fareed. He was caught hold by the PWs/eye witness and removed churry from his possession. In the cross-examination he has denied the suggestion for deposing falsely.

20. PW-4 ASI Shabbir Hussain has deposed that on 12.10.2009 he received information that one Ghulam Fareed has been murdered in the cattle pan of Ajab Khan. On such information he went there and saw the dead body lying in Suzuki pick up. He prepared inquest report in presence of the mashirs and recorded statement of complainant Parvez, arrested accused, who was caught hold by the PWs at the spot along with churry. Investigation officer prepared mashirnama of arrest and recovery in presence of mashirs. Then IO dispatched the dead body to the Jinnah Hospital for conduct postmortem report and he brought the accused to the police station where F.I.R. was recorded vide Crime No.286/2009 under section 302, PPC. In the cross-examination he has denied the suggestion that neither the accused had committed murder of the deceased nor he was arrested along with churry.

21. Inspector Abdul Khaliq has stated that on 12.10.2009 investigation of F.I.R. No.286/2009 under section 302, PPC was entrusted to him as well as custody of accused. He inspected the place of wardat at the pointation of accused, prepared such mashirnama in presence of witnesses and recorded statements of PWs under section 161, CPC. He sent bloodstained clothes of deceased and churry/crime weapon to the chemical examiner and produced positive chemical report at Ex-9/C.

22. From close scrutiny of evidence, we have come to the conclusion that the prosecution has proved its' case against the appellant for the reasons that incident was witnessed by eye witnesses, namely, Parvez, Muhammad Sajjad and Muhammad Tariq. It was 09:30 p.m. eye-witnesses were working at the cattle pan of Ajab Khan, presence of eye witnesses has

been established by the fact that they had caught hold the accused along with churry and handed over his custody to police and F.I.R. was promptly lodged in which names of eye witnesses have been mentioned. Learned advocate for accused has argued that PWs/eye witnesses were closely related to the deceased but their evidence cannot be discarded on this ground alone. Eye witnesses had no motive to falsely implicate the accused in this case. Appraisal of the evidence carried out by the learned trial Court did not suffer from any infirmity. Evidence of eye witnesses, namely, Parvez, Muhammad Sajjad and Muhammad Tariq is fully corroborated by the medical evidence. According to the prosecution case, accused caused churry blows to the deceased, medical officer has reported that deceased has died by means of injuries of sharp edged weapon. As regards to the motive, where there is direct evidence about the murder motive loses its significance, but still then motive is relevant to know the intention of culprit. In the present case, complainant Parvez has stated that 5/6 days prior to the incident there was exchange of hot words in between accused Sona Khan and his paternal uncle Rabnawaz. Due to fear Raḥnawaz left Karachi and went to the native place but accused committed murder of his maternal uncle Ghulam Fareed on account of such enmity. We have no hesitation to hold that prosecution has proved motive against accused for commission of offence. We did not find legal force in the contention of learned advocate for appellant Sona Khan alias Sonhra that PWs are closely related to the deceased, evidence of PWs cannot be rejected on the ground that they are related to the deceased for the reason that eye witnesses had no motive to falsely implicate the accused in the murder of Ghulam Fareed. It is settled proposition of law by now that interested witnesses is the one who has an animus for false charge. Mere relationship of a witness to the deceased is not enough reason to discard his testimony because such a witness is necessarily not an interested witness in the true sense of the term. Honourable Supreme Court has gone to the extent that even evidence of interested witness is always not discarded as held in the case of RAQIB KHAN v. The STATE (2000 SCMR 163). Relevant portion is reproduced as follows:-

“11. The contention that a witness who is related to the deceased is an interested witness, has since long been discarded by this Court. It is settled proposition of law by now that interested witness is the one

who has an animus for false charge. Mere relationship of a witness to the deceased is not enough of a reason to discard his testimony because such a witness is necessarily not an interested witness in the true sense of the term. This Court has gone to the extent that even evidence of interested witness is always not discarded. Reference may be made to the law laid down by this Court in *Niaz v. State* (PLD 1960 SC 387) which was reiterated again in *Nazir Hussain v. State* (PLD 1965 SC 188).”

23. In this case there are three eye witnesses of the incident and evidence of the eye witnesses remained firm on all major particulars of the case i.e. date, time and place of occurrence and despite lengthy cross-examination their credibility could not be shattered. Accused was caught hold at spot, crime weapon/churry was recovered from him, churry was sent to the chemical examiner, positive report was received. We have no hesitation to hold that accused came prepared at the place of incident to commit murder of deceased. Incident took place on 12.10.2009 at 09:30 and F.I.R. was promptly lodged on the same date at 11:00 p.m. wherein accused was specifically nominated with specific role, custody of accused along with churry was handed over by the eye witnesses to the police at the place of occurrence. Such a prompt lodging of F.I.R. excludes any chance of false implication. Learned counsel for the appellants has failed to point out any material contradiction, omission or improvement. It is a settled principle of law that minor contradictions or improvements in the statements of witnesses are to be overlooked, however, only material contradictions are to be considered as held in the case of *ANWAR SHAMIM and another versus THE STATE* (2010 SCMR 1791). Relevant portion is reproduced as under:-

“6. It is settled principle of law that minor contradictions or improvements in the statement of witnesses are to be overlooked. However, only material contradictions are to be considered. The learned counsel for the petitioners have failed to point out any material contradictions, omissions and improvements. See *Ranjha v. The State* (2007 SCMR 455). It is a settled principle of law that mere relationship between the witnesses and the deceased is not enough to discard their evidence. It is duty and obligation of the court for requiring corroboration of interested witnesses then it must first ascertain whether he saw the occurrence and was in a position to identify the accused and whether he should be believed without corroboration. The witnesses have faced lengthy cross-examination but their veracity cannot be shaken by the defence counsel. Both the courts below have come to the conclusion that their statements are of such a nature that their testimony must be given due weight and

were believed. It is also settled law that if court is satisfied about the truthfulness of direct evidence then the requirement of corroborative evidence is not of much significance. Corroboration is not a rule of law but is that of prudence.

24. No mitigating circumstance has been pointed out by learned counsel for the appellant for reduction of the sentence. Death sentence in a murder case is a normal penalty, Court should give reasons for lesser sentence as held in the case of DADULLAH and another versus The STATE (2015 SCMR 856), the Honourable Supreme Court of Pakistan has held as under:-

“..... Death sentence in a murder case is a normal penalty and the Courts while diverting towards lesser sentence should have to give detailed reasons. The appellants have committed the murder of two innocent citizens and also looted the bank in a wanton, cruel and callous manner. Now a days the crime in the society has reached an alarming situation and the mental propensity towards the commission of the crime with impunity is increasing. Sense of fear in the mind of a criminal before embarking upon its commission could only be inculcated when he is certain of its punishment provided by law and it is only then that the purpose and object of punishment could be assiduously achieved. If a Court of law at any stage relaxes its grip, the hardened criminal would take the society on the same page, allowing the habitual recidivist to run away scot-free or with punishment not commensurate with the proposition of crime, bringing the administration of criminal justice to ridicule and contempt. Courts could not sacrifice such deterrence and retribution in the name of mercy and expediency. Sparing the accused with death sentence is causing a grave miscarriage of justice and in order to restore its supremacy, sentence of death should be imposed on the culprits where the case has been proved.”

25. While considering the quantum of sentence awarded to the appellants, we do not find any mitigating or extenuating circumstance available on record so as to justify for awarding lesser punishment to the appellants. The appellant had committed murder in cruel and callous manner by causing knife blows at vital parts of deceased. Therefore, normal penalty of death awarded by the trial Court seems to be justifiable.

26. As a sequel to the discussion made above, appeal is *dismissed* and Reference for confirmation of death sentences is answered in *affirmative*.

JUDGE

JUDGE